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**OCT 29 2008**

**OFFICE OF PETITIONS**

In re Patent No. 7,344,860	:	
Franco et al.	:	
Issue Date: March 18, 2008	:	DECISION ON APPLICATION
Application No. 10/817,607	:	FOR
Filed: April 2, 2004	:	PATENT TERM ADJUSTMENT
Attorney Docket No. D0272 NP	:	

This is in response to the "PETITION TO CORRECT PATENT TERM ADJUSTMENT PERIOD IN GRANTED PATENT 7,344,860," filed March 13, 2008, requesting reconsideration of the initial determination of patent term adjustment under 35 U.S.C. 154(b) of 491 days.

The application for patent term adjustment under § 1.705(b) is **DISMISSED AS UNTIMELY FILED.**

Patentee is given **TWO (2) MONTHS** to respond to this decision. No extensions of time will be granted under § 1.136(a).

35 U.S.C. 154(b) provides for patent term adjustment for examination delay. Pursuant to 35 U.S.C. 154(b)(3)(B) and implementing regulation 37 C.F.R. § 1.705, an applicant shall receive an initial determination of patent term adjustment with the mailing of the Notice of Allowance and shall be given one opportunity to request reconsideration of that determination by way of filing of an application for patent term adjustment prior to the payment of the issue fee.

On June 28, 2007, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 433 days. This determination was based in part on the period of adjustment of 502 days associated with the Office's mailing of a first Office action on October 17, 2006,

reduced by 13 days of applicant delay for filing an Information Disclosure Statement (IDS) on November 29, 2009, and by 56 days for filing an IDS on April 12, 2007. PALM records indicate that the issue fee payment was received in the Office on September 20, 2007. No filing of an application for patent term adjustment preceded the payment of the issue fee. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended September 20, 2007. Accordingly, it is appropriate to dismiss this petition as untimely filed under 1.705(b).

Consideration under 1.705(d) is not appropriate. As stated in MPEP 2730, 1.703(d) provides that:

If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

The issues raised should have been timely raised on application for patent term adjustment under § 1.705(b).

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.



Nancy Johnson  
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Office of Petitions